IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.3531 of 2007
[Mrs. Jahidabi Ab. Rashid & another Vs. Mohd. Noorul Hasan Mohd. Ab. Hasan & ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.Y. Kapgate, Advocate for the petitioners.
Mr. S.G. Loney, Adv., for respondent no.1.
Mr. S.S. Doifode, AGP for Respondent No.2.
Mr. M.K. Pathan, Adv., for Respondent No.3.

CORAM : A.H. JOSHI, J.

DATE : 13th December,2007.

1. Heard.

2. The petitioners are aggrieved by the concurrent judgment of the First Appellate Court rendered in Misc. Civil Appeal No. 7 of 2007.

3. The petitioners now raise a grievance that if the right of way by keeping a service lane unaffected and open during pendency of suit is granted, it will amount to demolition of petitioners-defendants' house.

4. The story now put forward, which seems to have been brought before this Court, for the

first time, is that the defendants never perceived such difficulty while defending the claim.

5. Learned Advocate for the petitioners tried to demonstrate his claim by relying upon the photographs. At this stage, no conclusions can be drawn from the photographs, when on facts, both the courts have concurrently held that there exists a lane.

6. The defendants' apprehension that maintenance of the lane, as directed, would mean demolition of the defendants' house, can be comfortably overcome even now by seeking appointment of a Commissioner for recording actual measurements, in order that the defendants' existing house does not get a threat of demolition.

7. The Appellate Court has confirmed the finding of Trial Court about existence of a space between the property of plaintiff on one hand and defendant nos. 5 and 6 on the other, based on the documents on record from which it was emerging that the defendant nos. 5 and 6 had undertaken some encroachment in the intervening space and there was an order of demolition.

8. This finding of fact recorded in para 6 of the impugned judgment is not assailed showing it to be perverse or wholly unavailable on

record.

9. In these premises, no interference is called for in the concurrent finding of facts.

10. Writ Petition is dismissed.

Judge

|Hedau|